

**Accurate Web, Inc. and Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO. Case 29-CA-11552**

7 April 1986

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
DENNIS AND JOHANSEN**

On 3 September 1985 Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Accurate Web, Inc., Deer Park, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> Member Dennis finds it unnecessary to decide whether the Board's rule against relitigation is applicable in the circumstances of this case and relies instead on the judge's alternative rationale

*Martha Rodriguez, Esq.*, for the General Counsel.  
*Frederick D. Braid, Esq. (Rains & Pogrebin)*, of Mineola, New York, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Brooklyn, New York, 25 February 1985. On a charge filed 3 December 1984 a complaint was issued 25 January 1985 alleging that Accurate Web, Inc. (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act. Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the General Counsel and by Respondent.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a New York corporation, with an office and place of business in Deer Park, New York, is engaged in the printing, sale, and distribution of commercially printed and related products. Annually in the course and conduct of its business operations Respondent ships goods valued in excess of \$50,000 directly from its Deer Park facility to points located outside the State of New York. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and I so find. In addition, Respondent admits that Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act, and I so find.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. The Issues**

The issues are:

1. Is the decision in Case 29-RD-496 binding on the instant proceeding?
2. Did Respondent's withdrawal of recognition of the Union violate Section 8(a)(1) and (5) of the Act?

**B. The Facts**

On 5 February 1982<sup>1</sup> the Union filed a representation petition in Case 29-RC-5644 in a unit of all lithographic production employees. Thereafter, on 29 April, a secret-ballot election was conducted in a unit of all full-time and regular part-time production and maintenance employees, in which the majority of the votes were cast for the Union. On 15 June the Regional Director certified the Union as the exclusive collective-bargaining representative of Respondent's employees in the above-described unit. On 23 June the Union requested data for purposes of bargaining and on 1 July Respondent notified the Union that it was declining to supply the requested data because it had requested review of the Regional Director's decision certifying the Union. The Board denied Respondent's request for review on 9 August.

From 19 March 1982 through 7 April 1983 eight complaints were issued against Respondent alleging that Respondent engaged in certain unfair labor practices. On 30 September 1982 a complaint was issued against Respondent in Case 29-CA-9937-2 alleging that following the Union's certification Respondent refused to bargain with the Union and to provide it with information in violation of Section 8(a)(1) and (5) of the Act. Pursuant to a Motion for Summary Judgment, on 11 March 1983 the Board issued a Decision and Order in which it found that Respondent unlawfully refused to bargain with the Union and to provide it with the requested information. The Board ordered Respondent, upon demand, to bargain with the Union and extended the 1-year certification

<sup>1</sup> All dates refer to 1982 unless otherwise specified

period to begin "on the date Respondent commences to bargain in good faith with the Union."

On 9 May 1983 Respondent and the Union entered into a non-Board settlement settling Case 29-CA-9937-2 as well as the unfair labor practice complaints previously referred to. The settlement agreement provided, inter alia:

The Employer agrees not to seek any appeal of the decision and order of the NLRB in Case No. 29-CA-9937-2. Further, upon demand made by the Union at any time subsequent to the complete execution of this agreement by all parties and the approval by the NLRB of the withdrawal of all charges in accordance with paragraph 8 hereof, the Employer agrees to bargain in good faith with the Union concerning the terms and conditions of employment of the Employer's employees in the unit certified in NLRB Case No. 29-[RC-]5644.

On 1 July 1983 the Board approved the withdrawal of the charge in Case 29-CA-9937-2 and vacated its Decision and Order issued on 11 March 1983. On 22 August 1983 Judge Davis approved the withdrawal of the remaining unfair labor practice charges and dismissed the related complaints.

The parties commenced bargaining in August 1983. On 4 June 1984 a decertification petition was filed in Case 29-RD-496 and on 7 June 1984 Respondent withdrew its recognition of the Union. On 6 July 1984 the Regional Director dismissed the decertification petition. The letter dismissing the petition stated, in pertinent part:

Inasmuch as the Employer did not commence bargaining with the Union pursuant to the certification of representative I issued on June 15 1982 in Case No. 29-RC-5644 until shortly after August 22, 1983, and did so only pursuant to the terms of the non-Board settlement of the unfair labor practice charges, as described above, I have concluded that the 1-year certification period did not commence running until August 22, 1983, and that it therefore had not expired at the time you filed your petition herein on June 4, 1984.

On 18 July 1984 Respondent filed a request for review of the Regional Director's dismissal. On 13 November 1984 the Board denied Respondent's request for review and affirmed the Regional Director's dismissal of the decertification petition.

### C. Discussion

1. The decision in Case 29-RD-496 is binding on the instant proceeding

Section 102.67(f) of the Board's Rules states, in pertinent part:

Denial of a request for review shall constitute an affirmation of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

On 4 June 1984 a decertification petition was filed in Case 29-RD-496. On 6 July 1984 the Regional Director dismissed the petition, stating, "I have concluded that the 1-year certification period did not commence running until August 22, 1983, and that it therefore had not expired at the time you filed your petition herein on June 4, 1984." Respondent's request for review of the Regional Director's dismissal, with attachments, was filed on 18 July 1984. On 13 November 1984 the Board denied Respondent's request for review and affirmed the Regional Director's dismissal of the decertification petition.

It appears to me that Respondent is attempting to relitigate the identical issues which were considered by the Board in Case 29-RD-496 and which were found to be without merit. As the Board stated in *Chicago Metallic Corp.*, 275 NLRB 871, 871 (1985):

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

I find that all the issues raised by Respondent in this proceeding were or could have been litigated in the prior proceeding. Respondent does not offer to adduce any newly discovered or previously unavailable evidence nor does it allege any special circumstances that would require the Board to reexamine the decision made in the prior proceeding. I therefore find that Respondent has not raised any issue that is properly litigable in the unfair labor practice proceeding and, accordingly, the decision of the Regional Director in Case 29-RD-496 precludes the relitigation of the issue in the instant proceeding.

2. Respondent violated Section 8(a)(1) and (5) by its withdrawal of recognition

Even were I not to have found that the Regional Director's decision in Case 29-RD-496 precluded relitigation in the instant proceeding, I find that Respondent violated Section 8(a)(1) and (5) of the Act by its withdrawal of recognition of the Union on 7 June 1984.

On 9 May 1983 the parties entered into a settlement agreement in which the Union agreed to withdraw the charges and Respondent agreed not to appeal the Decision and Order in Case 29-CA-9937-2 and, in addition,

. . . upon demand made by the Union at any time subsequent to the complete execution of this agreement by all parties and the approval by the NLRB of the withdrawal of all charges . . . to bargain in good faith with the Union.

On 22 August 1983 Administrative Law Judge Steven Davis, before whom a hearing in the previously mentioned unfair labor practice cases had commenced on 7 March 1983, issued an order approving the withdrawal of the charges and dismissing the complaints.

I believe that the "formalities and the extent of Board involvement here are sufficient to justify giving the set-

tlement agreement binding effect.” *NLRB v. All Brand Printing Corp.*, 594 F.2d 926, 930 (2d Cir. 1979). Although the settlement was non-Board, it was nevertheless “surrounded by formalities.” *Id.* It occurred during the pendency of a hearing before an administrative law judge. In his order approving withdrawal of the charges and dismissing the complaints, Judge Davis noted that the request for approval of the withdrawal of the charges and dismissal of the complaints was “on the ground that the parties have reached an out-of-Board settlement, which provides a substantial remedy to the Charging Party and the 8(a)(3) discriminatees for damages they may have suffered.” I believe that the “extent of Board involvement is adequate to assure . . . that the settlement ‘manifests an administrative determination . . . that some remedial action is necessary to safeguard the public interests . . . .’” *Id.*

Although Respondent argues that its “primary concession” in the settlement was its agreement to forgo an appeal in Case 29-CA-9937-2, it is clear to me from the language of the settlement agreement that the quid pro quo for the Union’s agreement to withdraw the charges was the agreement of Respondent *both* not to seek an appeal of the Decision and Order in Case 29-CA-9937-2 and to bargain in good faith with the Union. See *Vantran Electric Corp.*, 231 NLRB 1014, 1015-1016 (1977), *enf. denied* 580 F.2d 921 (7th Cir. 1978). It is fair to assume that the “parties intended the duty to bargain contained in the settlement to meet Board standards, which means that bargaining would continue for a reasonable period even if the Union lost its majority support.” *NLRB v. All Brand Printing Corp.*, *supra*, 594 F.2d at 931.

In *Mar-Jac Poultry Co.*, 136 NLRB 785, 786 (1962), the Board stated:

One of the purposes of Section 9(c)(3) of the Act, which bars a petition filed within 12 months from the date of the last election, is to insure the parties a reasonable time in which to bargain without outside interference or pressure, such as a rival petition. In accordance with this purpose, the Board has, with judicial approval, adopted a rule requiring that, absent unusual circumstances, an employer will be required to honor a certification for a period of 1 year [footnote omitted].

The settlement agreement provided that Respondent would bargain in good faith with the Union “upon demand made by the Union at any time subsequent to the complete execution of this agreement by all parties and the approval by the NLRB of the withdrawal of all charges.” Judge Davis issued his order approving the withdrawal of the charges and dismissing the complaints on 22 August 1983. Accordingly, I find that the certification year began on that date. Respondent’s withdrawal of recognition of the Union on 7 June 1984 thus came within the 1-year certification period.

I find that the parties entered into a settlement agreement which extended the certification year. As a result of the agreement and Respondent’s commitment to bargain, the Union withdrew its charges. Accordingly, beginning 22 August 1983 the parties were entitled to and

were required to bargain for the ensuing year, free of any encumbrances. Because Respondent withdrew recognition from the Union during the certification year, as extended, it violated Section 8(a)(1) and (5) of the Act. See *Straus Communications*, 246 NLRB 846 (1979), *enf. denied* 625 F.2d 458 (2d Cir. 1980); *Vantran Electric Corp.*, *supra*, 231 NLRB 1014; *Pride Refining*, 224 NLRB 1353 (1976), *enf. denied* 555 F.2d 453 (5th Cir. 1977).

#### D. Concluding Findings

##### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by the Employer at its Deer Park, New York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act.

##### 2. The certification

On 29 April 1982 a majority of the employees of Respondent in the unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 29, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in the unit on 15 June, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

##### 3. The request to bargain and Respondent’s refusal

Commencing on 22 August 1983 and at all times thereafter the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. On 7 June 1984 Respondent withdrew recognition from the Union as the exclusive bargaining representative of its employees in the aforesaid appropriate unit and, commencing on that date and continuing at all times thereafter to date, Respondent has refused to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in the unit. Accordingly, I find that such refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by Respondent at its Deer Park, New

York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material since 15 June 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By withdrawing recognition from, and by refusing on 7 June 1984, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all employees of Respondent in the appropriate unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall order it to cease and desist from withdrawing recognition and refusing to recognize the Union and to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

Inasmuch as there should have been bargaining for at least 1 year following 22 August 1983 and since Respondent withdrew recognition from the Union on 7 June 1984 and, therefore, the Union was not accorded a full certification year, I shall extend the certification year "to embrace that time in which the employer has engaged in its unlawful refusal to bargain." *Pride Refining*, supra, 224 NLRB at 1354-1355. I shall require Respondent to bargain for that period commencing on the date on which Respondent and the Union resume bargaining. See *Mar-Jac Poultry Co.*, supra, 136 NLRB 785; *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

#### ORDER

The Respondent, Accurate Web, Inc., Deer Park, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to meet and bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employ-

<sup>2</sup> If no exceptions are filed as provided by Sec 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ment with Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by Respondent at its Deer Park, New York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act.

(b) In any other manner interfering with the efforts of the Union to negotiate for and represent the aforesaid unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Deer Park, New York, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT withdraw recognition from and refuse to meet and bargain with the Union concerning rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL NOT in any other manner interfere with the efforts of the Union to negotiate for and represent our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates

of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time production and maintenance employees, including maintenance, shipping and receiving employees, and press and prep room employees employed by Respondent at its Deer Park, New York facility, excluding office clerical employees, salespersons, guards and supervisors as defined in the Act.

ACCURATE WEB, INC.